



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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██████████, MI ██████████

Date Mailed: August 3, 2023
MOAHR Docket No.: 23-003641
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a hearing was held on July 24, 2023 via teleconference. Petitioner appeared and represented herself. Jennifer Braxmaier, Assistance Payments Worker, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits in the amount of \$██████████ due to client error?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On September 2, 2022, Petitioner applied for FAP benefits (Exhibit A, p. 4).
2. On September 28, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits for a household of four, beginning September 2, 2022 (Exhibit A, p. 19). The FAP benefit rate was based on ██████████ in earned income (Exhibit A, p. 20). The Notice also informed Petitioner that she was in the Simplified Reporting (SR) category and instructed that the only change reporting that was required was if the household exceeded the SR limit of \$3,007.00 (Exhibit A, p. 21).
3. On January 26, 2023, Petitioner submitted a Semi-Annual Contact Report (Exhibit A, p. 27). Petitioner reported that the household employment income had changed

by more than \$125.00 and that the source of the household income had changed (Exhibit A, p. 28). Petitioner also reported that she started working full-time (Exhibit A, p. 29).

4. On March 13, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits for a household of four, beginning March 1, 2023 (Exhibit A, p. 32). The FAP benefit rate was based on \$ [REDACTED] in earned income (Exhibit A, p. 33).
5. On April 20, 2023, MDHHS sent Petitioner a Wage Match Client Notice indicating that it received information that household member, [REDACTED] (Household Member), received quarterly income in the amount of \$ [REDACTED] from [REDACTED] (Employer) (Exhibit A, p. 21).
6. On June 6, 2023, MDHHS sent Petitioner a Notice of Overissuance indicating that MDHHS determined that she received an OI of benefits from January 1, 2023 to May 31, 2023 due to client error (Exhibit A, p. 59). MDHHS alleged that the OI amount was \$ [REDACTED] based on excess income from Employer (Exhibit A, p. 59).
7. On June 20, 2023, Petitioner requested a hearing to dispute the OI amount.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, MDHHS determined that Petitioner was overissued FAP benefits in the amount of \$ [REDACTED] based on Petitioner's failure to report Household Member's earned income at Employer in a timely manner. Petitioner disputed MDHHS' determination.

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700 (January 2018), p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 715 (October 2017), p. 6; An OI can be caused by client error, agency error, or an intentional program violation (IPV). BEM 700, pp. 5-9. An agency error is caused by incorrect action or inaction by MDHHS staff or Department processes. BEM 700, p. 5. Agency errors are not pursued if less than \$250.00 per program. *Id.* Conversely, a client error occurs when the OI was due to the client giving incorrect or incomplete information to MDHHS. BEM 700, p. 7.

Here, MDHHS received information that Household Member had earned income from Employer in the first and fourth quarters of 2022, in the amounts of \$ [REDACTED] and \$ [REDACTED], respectively (Exhibit A, p. 40). Petitioner testified that Household Member

did not actually receive that income due to a dispute with Employer and Household Member was forced to hire an attorney to attempt to recover back-pay. Although Household Member received checks from Employer, he could not cash the checks due to insufficient funds. Petitioner testified that the income was not available until March 2023.

MDHHS stated it required verification of the aforementioned facts and business dispute. However, when asked if it sent Petitioner a Verification Checklist (VCL) outlining the type of verification that it needed and the due date, MDHHS responded in the negative. Petitioner testified that she made a reasonable attempt to obtain verification from the owner of Employer but he would not cooperate due to the business dispute. Petitioner also testified that she was trying to submit verification to MDHHS to prove her account of the facts but that she did not know what type of verification was required.

MDHHS must obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (January 2022), p. 1. Verification is usually required at application/redetermination and when a reported change affects eligibility or benefit level. *Id.* To obtain verification, MDHHS must tell the client what verification is required, how to obtain it and the due date. *Id.*, p. 3. The client must obtain the requested verification, but the local office must assist the client if they need and request help. *Id.*, p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, MDHHS must use the best available information. *Id.* If no information is available, MDHHS must use its best judgement. *Id.* MDHHS allows the client ten calendar days to provide the requested verification. *Id.*, p. 7. Verifications are considered timely if received by the date that they are due. *Id.* MDHHS sends a negative action notice when the client indicates a refusal to provide the requested verification, or the time period given on the VCL has lapsed and the client has not made a reasonable effort to provide it. *Id.* Before making a final determination regarding eligibility, MDHHS must give clients a reasonable opportunity to resolve any discrepancies between their statements and information from another source. *Id.*, p. 9.

The record shows that MDHHS failed to properly inform Petitioner regarding what verification was needed in light of the discrepancy between Petitioner's statements and information from a third party. MDHHS was required to send Petitioner a VCL stating specifically what information was required, how to obtain it and when it was due. There is no evidence that MDHHS followed this procedure, contrary to Department policy. Additionally, there is not enough evidence in the record to show when Household Member received payment from Employer and what the amount of the payment(s) was.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits in the amount of \$ [REDACTED] based on client error.

DECISION AND ORDER

Accordingly, MDHHS's determination that Petitioner received a FAP OI of \$ [REDACTED] is **REVERSED**.

IT IS ORDERED that MDHHS delete the [REDACTED] OI in its entirety and cease any recoupment/collection action.



LJ/tm

Linda Jordan
Administrative Law Judge

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via-Electronic Mail :

DHHS
Jessica Sheely
Hillsdale County DHHS
40 Care Drive
Hillsdale, MI 49242
**MDHHS-Hillsdale-
Hearings@michigan.gov**

Interested Parties

M. Holden
D. Sweeney
BSC4

DHHS Department Rep.

Overpayment Establishment Section
(OES)
235 S Grand Ave Ste 811
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**MDHHS-RECOUPMENT-
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Via-First Class Mail :

Petitioner

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